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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 5 November 1993 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General

I have the honour to transmit, enclosed herewith, the information prepared by the Ministry for Human and Minority Rights of the Federal Republic of Yugoslavia on the violation of human rights and liberties of the Serbs in the Republic of Croatia as a result of the implementation of the Constitution of the Republic of Croatia or of its infraction.

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly under agenda item 114 (c).

(Signed) Dragomir DJOKIĆ
Ambassador
Chargé d'affaires a.i.

Annex

VIOLATION OF THE HUMAN RIGHTS AND FREEDOMS OF SERBS IN THE REPUBLIC OF CROATIA AS A RESULT OF THE IMPLEMENTATION OR INFRINGEMENT OF THE CONSTITUTION OF THE REPUBLIC OF CROATIA

1. The Constitution of the Republic of Croatia, which was adopted in 1990 and was accompanied by a euphoric campaign to reduce the size of the Serbian national body in Croatia, is the instrument which first introduced discrimination against Serbs in Croatia. Pursuant to this instrument, Croatia is established as the national State of the Croatian people and the State of other peoples and minorities who are citizens of Croatia. This includes the Serbs. This Constitution represents a major turning-point compared with the constitutional, de jure and de facto situation (under the Constitution of Croatia of 1974) which had prevailed earlier, when Croatia was defined as the national State of Croats and the national State of Serbs living in Croatia and of national minorities living there.

Having lost the equality with the Croatian people before the law and in political matters which they had been guaranteed by the Constitution in their common homeland, the Serbian people have virtually become a national minority. The implementation of the sole supreme legal instrument of the State of Croatia thus has set in motion a process that has undermined the rights of, and discriminated against, Serbs in Croatia.

2. The Constitution of the Republic of Croatia and the resulting constitutional legal system stunningly illustrate the enormous gulf between the rules of law and their implementation in practice. Although the Constitution of the Republic of Croatia was modelled on contemporary democratic systems and establishes a set of civil, political and other rights in keeping with the noblest standards, where respect for the rights of Serbs in Croatia is concerned (and on other matters as well) the Constitution hardly has served to prevent the endangerment and violation of fundamental human rights and freedoms, namely: the right to life, the prohibition against torture and other degrading treatment and the prohibition against extrajudicial executions. The violation of these human rights has resulted in the almost total, systematic ethnic cleansing of Serbs in Croatia, as illustrated by information in the report by Mr. Boutros Boutros-Ghali, the Secretary-General of the United Nations, to the Security Council on 15 May 1993 indicating that more than 250,000 Serbs have been expelled. Our own information indicates that more than 300,000 Serbs have been expelled. In other words, with the exception of the Republic of Serbian Krajina and a small enclave in Gorski Kotar, there are no more Serbs in the Republic of Croatia.

For example, a new charge introduced in Croatian penal legislation (Narodne Novine, No. 74/92) calling for the punishment of "any act the aim of which is to expel persons or prevent the return of expelled persons" would seem, at the very least, to have been displaced.

In addition to the rights discussed above, other rights guaranteed by the Constitution also have been brutally violated, in particular the right to equality before the law, more specifically, the fundamental guideline contained

in article 1, paragraph 2, of the Constitution of the Republic of Croatia stipulating that "power emanates from and belongs to the people as a community of free citizens enjoying equal rights". The violation of this right is illustrated in particular by the manner in which Croatian citizenship is granted (the famous so-called "domovnica" document). The Law on Citizenship of the Republic of Croatia (article 26) expressly stipulates that the legal authority, i.e., the Ministry of the Interior, has the right, at its discretion, to deny citizens the right to Croatian citizenship without any obligation to state the reasons for the denial. Since it is citizenship that confers entitlement to a long list of other rights, starting with civil and political rights (the right to vote), and ranging from property rights and rights of succession to rights relating to employment, including the right to social security and to retirement and disability benefits and the like, this procedure has forced several thousand Serbs in Croatia to leave their homes, which is a less brutal but equally effective form of ethnic cleansing.

Similarly, the right to equality before the law is not applied consistently with respect to the implementation of the Law on Amnesty for the offence of armed revolt envisaged in article 236 (f) of the Criminal Code of Croatia; according to official information from the Croatian authorities, criminal proceedings have been instituted under that Law against 20,000 Serbs in Croatia (our estimates indicate that the number is much higher). The law confers on the public prosecutor the discretionary power to keep a case open on the basis of very imprecise criteria relating to the "war crime" concept, and this power has been used very widely, with the result that the very people for whom the amnesty was intended have been unable to benefit from it. This is a typical example of the abuse of penal legislation and of justice in general.

The right to freedom of conscience and freedom of religion and the right to practice religion freely and openly have assumed singularly treacherous forms in Croatia. For example, the insistence on the idea of establishing a Croatian Orthodox Church is one furtive method that is being used to carry out the ethnic cleansing of Serbs in Croatia. During the war in Croatia in 1991 and 1992, 97 Orthodox Churches were demolished and destroyed.

3. Other rights guaranteed by the Constitution also are being violated in the Republic of Croatia, and the violations affect all citizens, the most vulnerable of whom are those categories of citizens who are non-Croats. Examples include loyalty oaths, dismissal notices (see appendix) and the attitude of society towards people who think differently (as illustrated by the publication, distribution, public announcement and even public sale of lists of Serbian intellectuals, artists, cultural celebrities and others whose views are different, which makes them vulnerable to a whole host of problems) and, in particular, towards persons of a different nationality, and even schoolchildren. The freedoms of speech, assembly and the press are the freedoms most seriously threatened for all citizens in Croatia.

The situation affecting freedoms in Croatia is illustrated by the fact that the Criminal Code of the Republic of Croatia, adopted in 1990, stipulates that, in cases involving the offence of disseminating false information (article 197, paragraph 2, dealing with serious violations), the penalty may be up to 10 years in prison, a typical example of a situation in which expressing one's opinion is considered an offence.

4. Despite the efforts of the authorities of the Republic of Croatia formally to supplement its legal and constitutional system with respect to guarantees of human rights, in particular with regard to the status of nationals of other communities and minorities in Croatia (the Charter of the Rights of Serbs and other Nationalities in the Republic of Croatia, the Constitutional Law on the Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities) and to create for itself the image of a State governed by the rule of law which applies the noble standards of democratic rights, and bearing in mind the many ways in which human rights are violated in Croatia, one might well ask whether people belonging to another ethnic group and, in general, citizens with other political and religious convictions, can be assured of protection under a system for the guarantee of human rights of the kind devised and implemented in Croatia.

Appendix

REPUBLIC OF CROATIA
Commune of Vinkovci
Communal Secretariat for Administrative Affairs

Vinkovci, 27 May 1991

Pursuant to article 377, paragraph 2, of the Law on Administration (LO RC No. 16/78, 50/78, 29/85, 48/85, 17/86, 41/90 and 47/90) and to the Conclusion of the Executive Council of the Assembly of the commune of Vinkovci, class 023-01/91-01/02, Ref. No. 2188-10-01/91-1 dated 14 May 1991, I hereby issue this

DECISION

terminating the employment of DUSAN JOVANOVIC, Director of the local Office of Sremske Laze, effective 31 May 1991.

EXPLANATION

The Executive Council, by its Conclusion dated 14 May 1991, instructed officials in charge of communal administrative bodies to issue decisions terminating the employment of all employees who have not signed the oath recognizing the Republic of Croatia.

Employee Dusan Jovanovic has refused to sign the oath of loyalty to the Republic of Croatia and, since he is not only an administrative official of the Republic of Croatia, but also the Director of the local Office, a position to which he can be appointed only with the approval of the Executive Council, the decision contained in the operative paragraph has been issued.

This decision may be appealed to the Secretary of the Communal Secretariat for general administrative matters within 15 days from the date of receipt of this decision.

Marijana Matanovič, Attorney
SECRETARY

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